

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHARLES WILLIAMS

Plaintiff,

-against-

PALLADIA, INC. and CORINE WORKMAN

Defendants
-----X

: 07cv 7720(CM)(RLE)

:
:
:
:
: **AFFIDAVIT**
:
:
:

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU

MARK E. SPUND, being duly sworn deposes and says:

1. I am a member of Davidoff Malito & Hutcher LLP, attorneys for defendants Palladia, Inc. and Corrine Workman, sued herein as “Corine” Workman. As such I am fully familiar with the facts and circumstances of this action and submit this affidavit in support of defendants’ motion seeking an order pursuant to Federal Rules of Civil Procedure Rule 12(b)(6):

(a) dismissing the Complaint against defendant Ms. Workman, as Title VII does not provide for individual liability, and

(b) dismissing that portion of the Complaint alleging discrimination based upon race, retaliation, and “other acts” - “No increase in wages after 1 year” for plaintiff’s failure to exhaust his administrative remedies.

2. Annexed as Exhibit "A" is a copy of the Complaint filed by plaintiff, pro se, with this Court.

3. Annexed as Exhibit "B" is a copy of the Complaint¹ of Discrimination, dated January 9, 2007 and filed by the plaintiff with the New York State Division of Human Rights (the "State Division") alleging "gender" discrimination only.

4. Annexed as Exhibit "C" is a copy of a Determination and Order After Investigation of the State Division dated March 8, 2007, finding that "there is No Probable Cause to believe that the respondent² has engaged in or is engaging in the unlawful discriminatory practice complained of" and dismissing plaintiff's Complaint.

5. Annexed as Exhibit "D" is a copy of a Dismissal and Notice of Rights from the United States Equal Employment Opportunity Commission dated May 2, 2007 indicating that the EEOC had adopted the findings of the State Division.

6. For the reasons set forth in the memorandum of law submitted herewith, the case against Ms. Workman should be dismissed as there is no individual liability under Title VII of the Civil Rights Act of 1964 as amended.

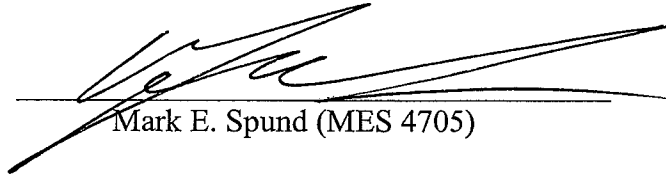
7. Similarly, as set forth more fully in defendants' memorandum of law, the claims against Palladia, Inc. alleging racial discrimination, retaliation and what would seem to be a claim of pay disparity should also be dismissed as plaintiff has failed to exhaust his administrative remedies. None of these allegations were contained in his Complaint filed with the State Division nor were any of these claims investigated by the State Division or the EEOC. Simply put, the allegations of racial discrimination,

¹ A charge of discrimination filed with the New York State Division of Human Rights is referred to as a Complaint as opposed to a charge filed with the EEOC which is referred to as a Charge.

² The only Respondent named in the State Division Charge was Palladia, Inc., Ms. Workman was not named.

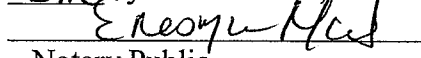
retaliation and what seems to be a pay disparity claim are not reasonably related to the complaint of gender discrimination filed with the State Division.

WHEREFORE, it is respectfully submitted that defendants' motion be granted in its entirety.


Mark E. Spund (MES 4705)

Sworn to before me this

01st day of November, 2007


Notary Public

ERASMIA MAKROS
Notary Public, State of New York
No. 01MA6070030
Qualified in Nassau County
Commission Expires Feb 19, 20 10

EXHIBIT A

United States District Court

SOUTHERN

DISTRICT OF

NEW YORK

Charles Williams

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

Palladia Inc
Corine Workman

'07 CIV 7720

TO: (Name and address of defendant)

JUDGE McMAHON

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)
Pro Se Charles Williams
5 West 91 Street, #5E
New York, New York 10024

An answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

AUG 29 2007

CLERK



(BY) DEPUTY CLERK

DATE

RETURN OF SERVICEService of the Summons and Complaint was made by me¹

Date

NAME OF SERVER (PRINT)

Title

CHECK ONE BOX BELOW TO INDICATE APPROPRIATE METHOD OF SERVICE☐ Served personally upon the defendant. Place where served: _____☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____☐ Other (specify) _____**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server _____

Address of Server _____

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

JUDGE McHUGH

07 CIV

7720

Charles Williams

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

v.

Palladia INC.
Corine Workmen

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Charles Williams, (print or type your name) am the plaintiff/petitioner in the above entitled case and I hereby request to proceed *in forma pauperis* and without being required to prepay fees or costs or give security. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor, and that I believe I am entitled to redress.

1. If you are presently employed:
- give the name and address of your employer
 - state the amount of your earnings per month

NYC Parks dept 61 St Broadway
\$348.00 Bi Weekly \$696.00 per month

2. If you are NOT PRESENTLY EMPLOYED:
- state the date of start and termination of your last employment
 - state your earnings per month

YOU MUST ANSWER THIS QUESTION EVEN IF YOU ARE INCARCERATED.

6/30/04

7/6/07

3. Have you received, within the past twelve months, any money from any source? If so, name the source and the amount of money you received.

Nys unemployment \$208 a week

- a) Are you receiving any public benefits? ☒ No. ☐ Yes, \$ _____
- b) Do you receive any income from any other source? ☐ No. ☐ Yes, \$ _____

I.F.P. GRANTED.

Leave to proceed in this Court
without payment of fees is
authorized. *IN FORMA PAUPERIS*
28 U.S.C. § 1915.

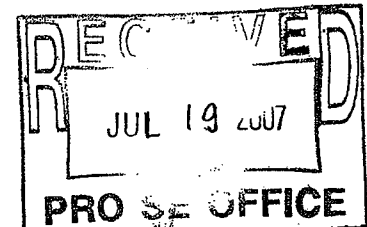
So Ordered;

AUG 28 2007

(Date)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

William Wood
Chief Judge



4. Do you have any money, including any money in a checking or savings account? If so, how much?

\$560.00

5. Do you own any apartment, house, or building, stock, bonds, notes, automobiles or other property? If the answer is yes, describe the property and state its approximate value.

☒ No. ☐ Yes, _____

6. List the person(s) that you pay money to support and the amount you pay each month.

7. Do you pay for rent or for a mortgage? If so, how much each month?

Rent \$ 876.

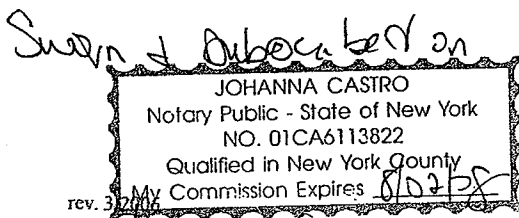
8. State any special financial circumstances which the Court should consider.

My INcome is below the
poverty level. Because I was fired
From my Job unjustly

I understand that the Court shall dismiss this case if I give a false answer to any questions in this declaration. In addition, if I give a false answer I will be subject to the penalties for perjury.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 19 day of July, 07
date month year



the 19 day of July 2007
by Charles William
signature

[Signature]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Charles Williams

NAME OF PLAINTIFF(S)

v.

COMPLAINT/

Palladia Inc

Corine Workman

NAME OF DEFENDANT(S)

This action is brought for discrimination in employment
pursuant to (check only those that apply):

- x _____ Title VII of the Civil Rights Act of 1964, as
codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended
in 1972, 1978 and by the Civil Rights Act of
1991, Pub. L. No. 102-166) (race, color, gender,
religion, national origin).

*NOTE: In order to bring suit in federal district court under
Title VII, you must first obtain a right to sue letter from the
Equal Employment Opportunity Commission.*

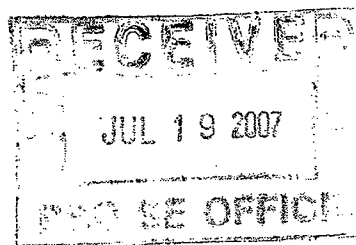
- Age Discrimination in Employment Act of 1967, as
codified, 29 U.S.C. §§ 621 - 634 (amended in 1984,
1990, and by the Age Discrimination in Employment
Amendments of 1986, Pub. L. No. 99-592, the Civil
Rights Act of 1991, Pub. L. No. 102-166).

*NOTE: In order to bring suit in federal district court
under the Age Discrimination in Employment Act, you must
first file charges with the Equal Employment Opportunity Commission.*

- Americans with Disabilities Act of 1990,
as codified, 42 U.S.C. §§ 12112 - 12117
(amended by the Civil Rights Act of 1991, Pub.
L. No. 102-166).

*NOTE: In order to bring suit in federal district court under
the Americans with Disabilities Act, you must first obtain a
right to sue letter from the Equal Employment Opportunity Commission.*

1



Jurisdiction is specifically conferred upon this United States District Court by the aforementioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriate under 42 U.S.C. §§ 1981, 1983 and 1985(3), as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, and any related claims under New York law.

1. Plaintiff resides at:

5 West 91 Street Apt 5E _____ / **New York**
 _____ /
Street Address *City*

New York _____ / **NY** _____ / **10024** / **212.799.7185**
County *State* *Zip Code* *Telephone*
Number

2. Defendant(s) lives at, or its business is located at:

2006 Madison Avenue _____ / **New York**
 _____ /
Street Address *City*

New York _____ / **NY** _____ / **10035** / **212.979.0100**

County *State* *Zip Code* *Telephone*
Number

3. The address at which I sought employment or was employed by the defendant(s) is

325 East 115th Street _____
Street Address

New York _____ / **New York** _____ / **NY** _____ / **10027.**
County *City* *State* *Zip Code*

4. The discriminatory conduct of which I complain in this action includes (check only those that apply) :

Failure to hire me.

X Termination of my employment.

Failure to promote me.

Failure to accommodate my disability.

X Unequal terms and conditions of my employment.

X Retaliation

X Other acts (specify) : **No increase in wages after 1 year.**

NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.

5. It is my best recollection that the alleged discriminatory

acts occurred on: **October 30, 2006.**
Date

6. I believe that defendant(s) (check one)

x is still committing these acts against me.

 is not still committing these acts against me.

7. Defendant(s) discriminated against me based on my:

(check only those that apply and explain)

[] race [X] color Complexion

[x] gender/sex M [] religion

[] national origin

[] age . My date of birth is:
Date

[] disability

NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.

8. The facts of my case are as follows;

I was terminated from my place of employment, Palladia Inc., on October 30, 2006. This was an unlawful and discriminating act by Palladia. This act was committed by Corine Workman, who had been harassing me because of my gender and my race. Corine coerced other female employees to lie about the incident.

It is Ms. Workman's claim that I falsified documents. This is untrue. I was in the process of trying to negotiate a raise after being employed at the company for more than 12 months. The results of this request were increase harassment and my termination based upon erroneous information.

(Attach additional sheets as necessary)

Note: As additional support for the facts of your claim, you may attach to this complaint a copy of the charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights, or the New York City Commission on Human Rights.

9. It is my best recollection that I filed a charge with the New York State Division of Human Rights or the New York City Commission on Human Rights regarding defendant's alleged discriminatory conduct on: **January 9, 2007.**

Date

10. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct on:

Date

Only litigants alleging age discrimination must answer Question #11.

11. Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (*check one*),

 60 days or more have elapsed.

 X less than 60 days have elapsed.

12. The Equal Employment Opportunity Commission (*check one*):

 has not issued a Right to Sue letter

 X has issued a Right to Sue letter,
which I received on .

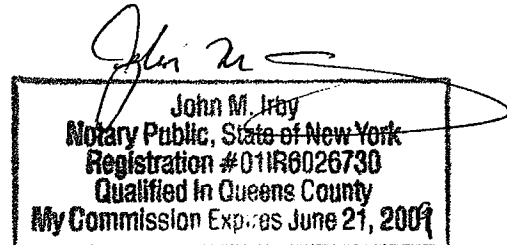
Date

NOTE: Attach a copy of the Right to Sue Letter from the Equal Employment Opportunity Commission to this complaint.

WHEREFORE, Plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, costs, and attorney's fees.

Charles William
PLAINTIFF'S SIGNATURE

Dated: 7/16/07



EEOC Form 161 (3/98)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Charles A. Williams**
5 West 91st Street Apt. 5 E
New York, NY 10024

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

16G-2007-01224

Holly M. Woodyard,
Investigator

(212) 336-3643**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.



While reasonable efforts were made to locate you, we were not able to do so.



You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosures(s)

Spencer H. Lewis, Jr.,
Director

5/2/07

(Date Mailed)

cc: **PALLADIA, INC.**
2006 Madison Avenue
New York, NY 10035
Attn: George Lino

Mark E. Spund, Esq.
Davidoff & Malito, LLP
200 Garden City Plaza Suite 315
Garden City, NY. 11530

EXHIBIT B

STATE DIVISION OF HUMAN RIGHTS
STATE OF NEW YORK : EXECUTIVE DEPARTMENT

STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

CHARLES A. WILLIAMS

Complainant

v.

PALLADIA, INC.

Respondent

VERIFIED COMPLAINT
Pursuant to Executive
Law, Article 15

Case No.
10115572

Federal Charge No. 16GA701224

I, Charles A. Williams, residing at 5 West 91st Street Apt. 5 E, New York, NY, 10024, charge the above named respondent, whose address is 2006 Madison Avenue, New York, NY, 10035 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of sex.

Date most recent or continuing discrimination took place is 10/27/2006.

The particulars are:

1. I am male. Because of this, I have been subject to unlawful discriminatory actions.
2. I commenced my employment with the respondent on October 8, 2006 as a House Monitor. My time, attendance and work performance were satisfactory.
3. On October 31, 2006, I was advised that my employment with the respondent was being terminated. The reason given by the respondent was that I had falsified timesheets. This is untrue, as I have never falsified any documents.
4. I allege that I was wrongfully terminated from my employment due to my gender as my supervisor harbors an animus against men. I know of four men who were terminated by respondent within a year, and three have transferred. Both myself and another Housing Monitor who were male were replaced by females.

Based on the foregoing, I charge respondent with an unlawful discriminatory practice relating to employment because of sex,

Complaint


SDHR Case No. 10115572

Charles A. Williams v. Palladia, Inc.

in violation of the New York State Human Rights Law (Executive Law, Article 15), Section 296.

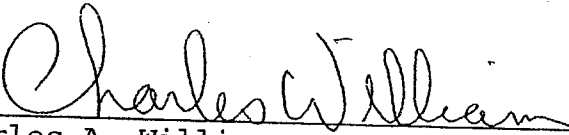
I also charge the above-named respondent with violating Title VII of the Civil Rights Act of 1964, as amended (covers race, color, creed, national origin, sex relating to employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

I have not commenced any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

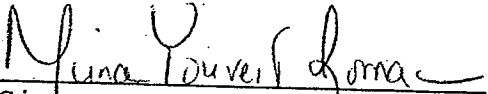

Charles A. Williams

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

Charles A. Williams, being duly sworn, deposes and says: that he/she is the complainant herein; that he/she has read (or had read to him or her) the foregoing complaint and knows the content thereof; that the same is true of his/her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he/she believes the same to be true.


Charles A. Williams

Subscribed and sworn to
before me this 9th day
of January, 2007.


Signature of Notary Public

MIRNA Y OuverT ROMAN
COMMISSIONER OF DEEDS
No. 4-5446
Qualified in Queens County
My Commission Expires January 01, 2008

EXHIBIT C

STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS

MAR 13 2007

STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

CHARLES A. WILLIAMS,

Complainant,

v.

PALLADIA, INC.,

Respondent.

DETERMINATION AND
ORDER AFTER
INVESTIGATION

Case No.
10115572

Federal Charge No. 16GA701224

On 1/9/2007, Charles A. Williams filed a verified complaint with the State Division of Human Rights charging the above-named respondent with an unlawful discriminatory practice relating to employment because of sex in violation of the Human Rights Law of the State of New York.

After investigation, and following opportunity for review of related information and evidence by the named parties, the Division of Human Rights has determined that there is NO PROBABLE CAUSE to believe that the respondent has engaged in or is engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

The investigation revealed that the complainant was terminated for falsifying the respondent's communications log and his time sheet. The investigation revealed that the respondent discovered that the complainant was not at his post on October 31, 2006 for a period of approximately two and one half hours. This discovery was made by a female peer who was assigned to the same shift at a post across a yard from the complainant's site. This employee had to obtain keys from the complainant's site. She discovered the complainant away from his post when she went to get the keys from his site. This employee performed two security sweeps of the complainant's site and did not see him there. This incident was reported to the administrative assistant of the complainant's site.

The following day, the complainant's supervisor was apprised of the incident. Furthermore, it was discovered that the complainant altered an entry in the security log, and he signed his timesheet for November 1, 2006, a day that he had not worked.

The investigation revealed that the complainant was disciplined twice and suspended once prior to his termination. The investigation further revealed no evidence that the

complainant's sex was a factor in how he was treated by the respondent or the respondent's termination of his employment. The investigation revealed that the respondent continued to employ other male House Monitors after the complainant was terminated.

The investigation revealed that the respondent terminated three other males prior to terminating the complainant; however, it appears that those individuals were terminated for legitimate business reasons.

The complaint is therefore ordered dismissed and the file is closed.

PLEASE TAKE NOTICE that any party to this proceeding may appeal this Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a Notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Notice and Petition must also be served on all parties including General Counsel, State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. DO NOT FILE THE ORIGINAL NOTICE AND PETITION WITH THE STATE DIVISION OF HUMAN RIGHTS.

Your charge was also filed under Title VII of the Civil Rights Act of 1964. Enforcement of the aforementioned law(s) is the responsibility of the U.S. Equal Employment Opportunity Commission (EEOC). You have the right to request a review by EEOC of this action. To secure review, you must request it in writing, within 15 days of your receipt of this letter, by writing to EEOC, New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10004-2112. Otherwise, EEOC will generally adopt our action in your case.

Dated: *March 8, 2007*
New York, New York

STATE DIVISION OF HUMAN RIGHTS

By: *Wilson P. Ortiz*
Wilson P. Ortiz
Acting Regional Director

EXHIBIT D

DISMISSAL AND NOTICE OF RIGHTS

To: **Charles A. Williams**
5 West 91st Street Apt. 5 E
New York, NY 10024

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

16G-2007-01224

Holly M. Woodyard,
Investigator

(212) 336-3643**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

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Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.



While reasonable efforts were made to locate you, we were not able to do so.



You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.



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The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

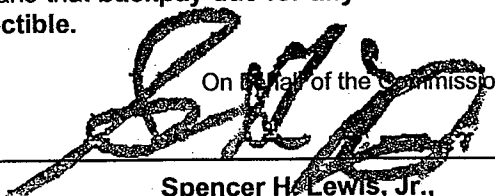
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On behalf of the Commission


Spencer H. Lewis, Jr.,
Director

5/2/07

(Date Mailed)

Enclosures(s)

cc: **PALLADIA, INC.**
2006 Madison Avenue
New York, NY 10035
Attn: George Lino

Mark E. Spund, Esq.
Davidoff & Malito, LLP
200 Garden City Plaza Suite 315
Garden City, NY 11530

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index No. 07 CV 7720 (CM)(RLE)

CHARLES WILLIAMS,

Plaintiff,

-against-

PALLADIA, INC. and CORINE WORKMAN,

Defendants.

NOTICE OF MOTION AND AFFIDAVIT

DAVIDOFF MALITO & HUTCHER LLP

Attorneys for Defendants
200 Garden City Plaza, Suite 315
Garden City, New York 11530
(516) 248-6400